Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1996

VIRGIL JONES, Petitioner

-vs-

RONALD WATSON, J. VOLLAND,
and W. STEC, Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

AMBROSE & CUSHING, P.C.
Attorneys for Petitioner
221 N. LaSalle St., S-2248
Chicago, Illinois 60601
(312) 726-1470

John C. Ambrose

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QUESTIONS PRESENTED FOR REVIEW

This case presents the question whether summary judgment was properly entered holding probable cause existed to arrest a peaceful demonstrator for disorderly conduct based upon the alleged act of blocking a public way, where the evidence was clear, or, at a minimum, conflicting as to the lack of authority of a construction company to occupy that public way.

This case also presents the question whether the arresting officer was required to investigate readily available sources of public information revealing that the construction company attempting to occupy the public way did not have any such right, before the officer was entitled to conclude that the peaceful demonstrators were blocking access to the construction site.

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OPINIONS DELIVERED IN CASE

The opinions of the District Court for the Northern District of Illinois and the Court of Appeals for the Seventh Circuit are set forth in full in the Appendix.

JURISDICTIONAL STATEMENT

The petitioner's complaint in the District Court invoked that Court's jurisdiction under 28 USC section 1331 based upon a federal question arising under 42 USC Section 1983. After a United States Magistrate Judge entered a final and appealable order of summary judgment in favor of the respondents, the petitioner appealed to the Circuit Court of Appeals for the Seventh Circuit, invoking that Court's jurisdiction under 28 USC section 1291.

The Seventh Circuit Court of Appeals affirmed the District Court's order on February 10, 1997. This Court's jurisdiction is invoked under 28 U.S.C. Section 1254(1), and the Petition for Certiorari is timely filed under United States Supreme Court Rule 13.4.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be searched.

United States Constitution, Amendment 4

> [One commits disorderly conduct by]
> (a) knowingly acting unreasonably so as to provoke or aid in a breach of the peace;
>
> (d) knowingly failing to obey a lawful order of dispersal by a person known by [the ar-

> restee] to be a peace officer under circumstances where three or more persons are committing acts of disorderly conduct in the immediate vicinity, which acts are likely to cause... serious inconvenience, annoyance, or alarm;
>
> (e) assembling with three or more people for the purpose of using force to disturb the public peace.

Chicago Municipal Ordinances, Section 8-4-010

STATEMENT OF THE CASE

The petitioner is an Alderman for the City of Chicago. On August 28 and again on August 31, 1992, he was arrested for disorderly conduct while participating in a peaceful demonstration on the sidewalk in front of a Chicago Transit Authority construction site. The demonstrations were a response to telephone complaints from Jones' constituents, who reported that the construction company doing the work at that site ("Walsh") had improper

or no permits and was creating dust and dirt problems.

Jones' own examination of the posted work permit revealed that it belonged to a company other than Walsh and that Walsh itself had no valid permit. Jones introduced in evidence a permit issued by Chicago's Department of Buildings to "J. H. Pomeroy & Company and A. Epstein & Sons" and granting permission only to the named parties to do construction at the site. He introduced in evidence a letter from Chicago's Department of Buildings dated May 29, 1992, authorizing construction operations only between the hours of 8:00 a.m. and 9:30 p.m. and requiring compliance with approved plans and Chicago ordinances.

Jones also discovered at Chicago's Department of Zoning that Walsh had no

driveway or hydrant permit, rendering illegal its use of the curb and sidewalk as a driveway. Although Walsh obtained a "temporary driveway permit" issued on August 27, the day before the planned demonstration, that document placed restrictions on use of the curb to require that the curb, walk, and parkway be planked with 8' by 10' planks and that the sidewalk be kept open at all times. Walsh was noncompliant with this permit. Even the arresting officer recalled seeing only some gravel placed across the sidewalk to create an incline, testimony in conflict with Jones' testimony that there was nothing more than a simple curb.

Around 6:00 a.m. on August 28, 1992, Alderman Jones and several other aldermen, state representatives, and additional political figures gathered across the street

from the construction area to protest Walsh's activity, including its noncompliance with affirmative action requirements. At some point during the demonstration, Jones and a few other demonstrators crossed the street and stood on the sidewalk outside the fenced construction site and in front of or near one of two swinging gates leading into the site. That gate was locked. The other gate farther west was large enough to accommodate a crane.

Jones informed Chicago Police Commander Ronald Watson of Walsh's illegal use of the curb and sidewalk as a driveway. He told Watson that Walsh did not have a proper permit to be operating at the site at all. He informed Watson of his own investigation showing the absence of proper permits that would allow Walsh

to obstruct the sidewalk and stated that he and the other demonstrators were not violating any laws by standing on the public sidewalk when construction work could not begin in any event before 8:00 a.m.

By his own admission, Watson had authority to inspect construction sites, consult with government agencies, stop construction work done without a proper permit, and issue a citation. He did not know whether the construction permit posted at the site was in Walsh's name and whether Walsh had a driveway permit, and he did not know what Walsh was authorized to do. Rather than investigate Jones' information, however, Watson told Jones to go back to the other side of the street.

When Jones continued to request that Watson investigate Walsh's operations, he

was arrested. The arrest occurred at 6:20 a.m., an hour and forty minutes before construction work could lawfully commence on the site. Jones testified there was no traffic at that hour; a truck that had been sitting on the street came up in front of the gate only after someone signaled it after his arrest.

Watson believed the protesters had breached the peace, but he did not know what ordinance they were violating. Officer Volland charged Jones under Chicago's disorderly conduct ordinance. Although Jones was not disorderly against Volland, Volland alleged that Jones

> knowingly and intentionally refused to move from gate leading to a construction site, after twice being asked to do so, in an unreasonable manner as to alarm and disturb Officer Volland, and provoke a breach of the peace.

On August 31, 1992, Jones and the other demonstrators returned to the construction site. At this time, Watson still had not investigated Walsh's permits and lack of authority to block the sidewalk. Jones walked to the south side of the street and asked Commander Watson to look at the construction permit that had been reattached to the fence. Watson declined and ordered Jones back to the north side of the street. Jones was arrested on this occasion at 7:01 a.m., fifty-eight minutes before work could lawfully commence on the construction site.

Jones testified the demonstrators could not have been blocking traffic on August 31 because there was no traffic. A truck did not come to the entrance until it was signaled to do so after the demonstrators were under arrest. Officer Stec

agreed the Walsh trucks made no attempt to use the second gate. On August 31, Jones was charged with disorderly conduct in that he

> knowingly and with intent blocked vehicles from entering and exiting the construction site on C.T.A. property, after a lawful order of dispersal by a person known by him as a police officer.

On the date set for trial, the City voluntarily dismissed both disorderly conduct charges.

Alderman Jones filed a complaint in the Cook County Circuit Court, which was subsequently removed to the United States District Court for the Northern District of Illinois under 28 U.S.C.A. Section 1441. The complaint, as amended, alleged that Jones was lawfully on a public sidewalk on August 28 and August 31, 1992, exercising his constitutionally protected

rights under the First and Fourth Amendments of the United States Constitution and that he was wrongfully arrested and charged with disorderly conduct in violation of 42 U.S.C.A. Section 1983.

All three defendants raised qualified immunity as an affirmative defense. The parties consented to the exercise of jurisdiction by a United States Magistrate, who entered summary judgment for the respondents and against the petitioner on the ground the respondents were protected by qualified immunity as a defense even if probable cause to arrest did not exist. The District Court did not reach the question whether probable cause actually existed for either of the two arrests.

The Court of Appeals affirmed, but by applying the converse analysis. It found probable cause existed for each arrest and

therefore declined to address the question of qualified immunity.

ARGUMENT

I.

QUESTIONS OF MATERIAL FACT EXISTED WITH RESPECT TO THE EXISTENCE OF PROBABLE CAUSE FOR ALDERMAN JONES' TWO ARRESTS, PRECLUDING SUMMARY JUDGMENT FOR THE DEFENDANTS.

Upholding the District Court's order, the Circuit Court of Appeals relied on subsection (d) of the Chicago ordinance defining disorderly conduct. That subsection defined disorderly conduct as

> (d) knowingly failing to obey a lawful order of dispersal by a person known by [the arrestee] to be a peace officer under circumstances where three or more persons are committing acts of disorderly conduct in the immediate vicinity, which acts are likely to cause... serious inconvenience, annoyance, or alarm.

The Circuit Court of Appeals held the facts confronting Commander Watson on both

dates supported his conclusion that Jones' position on the public sidewalk in front of a gate leading into the construction site, and his refusal to obey an order to disperse, gave rise to probable cause for the arrests.

The order to disperse was lawful and effective only if Jones and the other protesters were, in fact, obstructing traffic on the sidewalk. Evidence that there was any traffic at all was conflicting, and the uncontradicted evidence was that the demonstrators were in front of only one of two gates, that that gate remained closed and padlocked, and that a second gate was large enough to accommodate any truck and certainly any person seeking access. No entry was attempted by any Walsh truck through that gate further west, which remained unobstructed. Watson testified he

only "assumed" Walsh brought its supplies into the site through the gate next to the demonstrators. That some Walsh workers were already inside the fence demonstrates their access to, rather than exclusion from, the worksite.

The evidence also demonstrated that Walsh had no right to drive its trucks over the public sidewalk. Its temporary driveway permit required it to install planking, which it failed to do, and to keep the sidewalk open at all times. In addition, Walsh was forbidden to commence work before 8:00 a.m., nearly two hours after the first arrest and one hour after the second arrest.

Alderman Jones' position on the public sidewalk was presumptively superior to that of Walsh, since a public sidewalk is a place historically associated with

the free exercise of expressive activities and considered, without more, to be a "public forum," United States v. Grace, 461 U.S. 171, 177, 179, 75 L. Ed. 2d 736, 743, 745, 103 S. Ct. 1702 (1983), and since peaceful picketing is an expressive activity protected by the First Amendment,[1] Id.; Landry v. Daley, 288 F. Supp. 189, at 193 (N.D. Ill. 1968). Probable cause to arrest one lawfully on a public sidewalk exists only if there is also evidence that the accused is blocking free

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[1] Both the District and Circuit Courts held that Jones waived his First Amendment claims. It must be emphasized that there are inescapable First Amendment dimensions to Jones' Fourth Amendment claim. As the respondents conceded in their brief, an element that must be satisfied is that Watson's order to disperse was "lawful." The lawfulness of that order necessarily implicated the First Amendment rights of the demonstrators to be on the public sidewalk, which are therefore naturally subsumed in the Fourth Amendment analysis.

passage or otherwise causing an obstruction of traffic. Shuttlesworth v. Birmingham, 382 U.S. 87, 90, 91, 92, 15 L. Ed. 2d 176, 179, 180, 86 S. Ct. 211 (1965).

If Walsh had no right to the sidewalk superior to that of the demonstrators, Jones could not have been obstructing Walsh traffic by remaining on the sidewalk. Jones' election to proclaim and stand on his rights did not alone constitute disorderly conduct under the Chicago ordinance. People v. Douglas, 29 Ill. App. 3d 738, 331 N.E. 2d 359 (1st Dist. 1975). "[O]ne cannot be punished for failing to obey the command of an officer if that command is itself violative of the Constitution." Wright v. Georgia, 373 U.S. 284, 292-93, 10 L. Ed. 2d 349, 355, 83 S. Ct. 1240 (1963). See also Gregory et al. v. City of Chicago, 394 U.S. 111, 120, 22 L.

Ed. 2d 134, 141, 89 S. Ct. 946 (1969) (J. Black, concurring) [arrest for standing on constitutional rights and refusing officer's direction to leave not disorderly conduct under Chicago municipal ordinance].

The Illinois cases construing the Chicago ordinance upon which the Circuit Court of Appeals relied are all distinguishable. In City of Chicago v. Fort, 46 Ill. 2d 12, 262 N.E. 2d 473 (1970), there was specific evidence that people had to walk in the street in order to pass by a large crowd sitting and lying on top of parked cars in a city parking lot and blocking the entrances to several businesses. In People v. Raby, 40 Ill. 2d 392, 240 N.E. 2d 595 (1968), there was specific evidence that sixty-five persons completely blocked a downtown intersection

at 5:00 p.m. In City of Chicago v. Joyce, 38 Ill. 2d 368, 232 N.E. 2d 289 (1967), there was specific evidence people were unable to pass along the sidewalk in front of Chicago's City Hall because of a group of over thirty sitting and kneeling people. In this Court's opinion in Bachellar v. State of Maryland, 397 U.S. 564, 25 L. Ed. 2d 570, 90 S. Ct. 1312 (1970), as well, there was specific evidence that the defendants, already expelled from a recruiting station, lay down in front of the station and blocked free passage on the sidewalk.

In the instant case, the evidence that free passage was obstructed by Jones was either nonexistent or conflicting. Indeed, the evidence pointed to Walsh as the party without authority to block the sidewalk. The case thus presented a

classic jury question whether an order of dispersal was lawful within the meaning of subsection (d) of the ordinance. For this reason alone, summary judgment was precluded.

II.

WATSON'S FAILURE TO INVESTIGATE READILY ACCESSIBLE FACTS THAT WOULD HAVE HELPED TO CLARIFY THE CIRCUMSTANCES OF THE ARRESTS CAUSED HIM TO FORM AN UNREASONABLE BELIEF THAT HE HAD PROBABLE CAUSE TO ARREST.

There were additional questions of fact raised by Watson's failure to investigate readily available information pertinent to whether Walsh had any right to the sidewalk superior to that of the demonstrators and thus to whether the demonstrators on the public sidewalk were obstructing traffic. Jones told Watson on August 28 of his own investigation showing the absence of proper permits allowing

Walsh to obstruct the sidewalk. Watson simply ignored Jones' information.

The information Jones uncovered was all in the public domain and was readily discoverable among Chicago's agencies like its Department of Buildings and its Department of Zoning. In addition, Watson was vested with authority to consult with the appropriate agencies, inspect the construction site, stop construction work done without a proper permit, and issue a citation. Watson could easily have investigated Walsh's permits or lack thereof and its authorized hours for work and use of the public sidewalk before the August 28 demonstration, of which he had advance notice, or, at a minimum, before the August 31 demonstration.

The Circuit Court of Appeals dismissed Jones' argument about the absence

of an investigation as a request that it carve out a "vigilante exception." This statement betrays a fundamental misunderstanding about the relevance of Walsh's noncompliance. The issue is not Walsh's violation of the law in the abstract, but rather which law Walsh was violating. If Walsh had no legal right to make use of a public way for its trucks, then the demonstrators were not obstructing traffic, and the officers had no authority to order their dispersal from a public sidewalk.

The Circuit Court's casual dismissal of this point is at odds with its own previous opinions and those of other Circuits. In BeVier v. Hucal, 806 F. 2d 123 (7th Cir. 1986), the Court, in holding that an officer unreasonably failed to discover the true facts about children who appeared to be neglected, emphasized that

police officers may not close their eyes to facts that would help to clarify the circumstances of an arrest. 806 F. 2d at 128. See also Spiegel v. City of Chicago, 920 F. Supp. 891 (N.D. Ill. 1996), rejecting a claim of qualified immunity when officers failed to investigate the plaintiff's information about a longstanding feud with a battery complainant before arresting him for battery.

Other circuits, as well, reject official claims of probable cause for arrest when readily available information would cast doubt on an officer's perception of the critical facts leading to an arrest. Sevigny v. Dicksey, 846 F. 2d 953 (4th Cir. 1988); Merriman v. Walton, 856 F. 2d 1333 (9th Cir. 1988), cert. den. 491 U.S. 905 (1989); Rodriguez v. Comas, 888 F. 2d 899, 902 (1st Cir. 1989). See also Fuller

v. M.G. Jewelry, 950 F. 2d 1437 (9th Cir. 1991) [adequate compliance with duty to investigate witness' report]; accord, Wu v. City of New York, 934 F. Supp. 581 (S.D.N.Y. 1996).

The cases cited by the Circuit Court of Appeals in the instant case are distinguishable. In Kompare v. Stein, 801 F. 2d 883 (7th Cir. 1996), the issue was whether a coroner's assistant was obligated to discover a rare medical condition causing easy mesenteric rupture before diagnosing child abuse. In Forman v. Richmond Police Dept., 104 F. 3d 950 (7th Cir. 1997), the police did a lengthy investigation on a bingo center's authority to operate; the defendant's complaint was about failure to check with the IRS and another state's Secretary of State's office.

In the instant case, Watson had at his disposal affirmative, explicit evidence casting doubt on Walsh's authority to drive its trucks across the sidewalk where the demonstrators stood, a threshold inquiry in determining whether Jones was in fact obstructing traffic. He chose to blind himself to those readily accessible facts, even though Jones directed him to sources of information. As for the second arrest, Watson had three days in which to check Walsh's status, yet he still took no steps to ascertain the status of Walsh's right to use the public sidewalk as a driveway.

CONCLUSION

For all of the foregoing reasons, the Petitioner, Virgil Jones, respectfully urges that this Court's review is important and desirable in order to assure uni-

form application among the federal circuits of an officer's duty to investigate available and pertinent information before effecting an arrest.

Respectfully submitted,

John C. Ambrose
AMBROSE & CUSHING, P.C.
Attorneys for Petitioner
221 N. LaSalle St., S-2248
Chicago, Illinois 60601
(312) 726-1470

May 9, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VIRGIL JONES,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 93 C 7799
	)	
RONALD WATSON,	)	
JAMES VOLLAND, and	)	
WILLIAM STEC,	)	
	)	
Defendants.	)	

MEMORANDUM DECISION

Joan H. Lefkow, Executive Magistrate Judge:

Defendants have moved for summary judgment on the two count Second Amended Complaint which plaintiff, Virgil Jones, filed pursuant to 42 U.S.C. Sec. 1983 alleging violations of his civil rights. Defendants contend that the undisputed facts establish that they had probable cause to arrest Jones on both August 28 and August 31, 1992 and, even if there was no probable cause, they are entitled to qualified immunity with respect to the arrests.

The facts stated in a light favorable to Jones to the extent they are supported by the record are as follows:

At all times relevant to the allegations of the complaint, Jones was the alderman for the fifteenth ward in the City of Chicago. Defendant, Ronald Watson,

was the Commander of the Seventh District of the Chicago Police Department. The other defendants, James Volland and William Stec, were police officers under Watson's command.

Sometime on August 27, 1992, Commander Watson received information from someone under his command that, on August 28, Alderman Jones planned to demonstrate and to stop work at a Chicago Transit Authority ("CTA") construction site located near 74th and Wood Streets in Chicago.[1] Commander Watson understood that the motivation for the demonstration was to demand jobs for the residents of Alderman Jones's ward. Based on that information, Commander Watson deployed his tactical unit to the site to ensure that the demonstration remained peaceful.

Some time before 6:00 a.m. on the morning of August 28, Alderman Jones, along with various other public officials, community leaders and private citizens, began to arrive at the CTA construction site to protest what they believed to be non-compliance with minority hiring requirements at the worksite. Al-

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[1] There appears to be some dispute whether the CTA construction site was located within Alderman Jones's ward. During his deposition, Alderman Jones repeatedly referred to the site as located in his ward. The defendants, however, have offered ward maps and an affidavit of the seventeenth ward alderman indicating that the construction site is in the seventeenth, not the fifteenth ward. Ultimately, the location of the construction site has no effect on the outcome.

though the exact number of protesters is unknown, the estimates have ranged from approximately 30 to 50 people. They gathered on the north side of 74th Street across the street from the construction site. Shortly after 6:00 a.m., Jones and five or six others crossed to the south side of 74th Street and stood on the sidewalk in front of a gate into the construction site. The construction company had laid gravel over the curb to create an incline which would allow vehicles to cross over the curb, then continue over the sidewalk and through the gate. During all times that Alderman Jones was present, the gate was locked.[2]

Commander Watson approached the group in front of the gate and advised them that if they continued to block the gate and refused to move, they could be arrested. He requested that they return to the north side of the street. Alderman Jones responded for the group by telling Commander Watson that the demonstrators were peaceful, that as alderman for the ward, he had the right to inspect construction sites and permits within his ward, and that the construction company did not have the proper permits to enter or exit the site or to start work prior to 8:00 a.m. Although there was a building permit on display at the site, someone inside the fence took it down when Alderman Jones tried to read it.

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[2] This fact is disputed. As required, for purposes of this motion, Alderman Jones's version of the facts has been taken as true.

Commander Watson repeated his warnings to move back to the north side of the street. Approximately one and a half minutes after giving the last of his warnings, Commander Watson directed the officers at the scene to arrest those protesters who were standing in front of the gate. Officer Volland arrested Alderman Jones and subsequently charged him with disorderly conduct. After the protesters were arrested, the police signaled to a truck parked down the street which then drove up to the gate.[3] The protesters on the north side of the street continued to demonstrate throughout the morning.

On August 31, 1992, at approximately the same time of day, Alderman Jones returned to the CTA construction site to stage another demonstration. Again, he crossed to the south side of 74th Street with five or six other protesters. Alderman Jones and the other protesters stood in front of the gate but this time they interlocked their arms. Commander Watson again advised the group in front of the gate that they would be arrested if they refused to move. Alderman Jones told Commander Watson that the demonstrators had the same intentions and concerns

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[3] The timing with respect to the truck is in dispute. Commander Watson's deposition testimony indicates that the truck drove up to the gate and at that point, he began to give his warnings to the protesters that they would be arrested if they did not move. In contrast, Alderman Jones specifically stated that the truck did not drive up until after he was arrested.

as he had expressed to the commander on August 28. As on August 28, the police signaled for a truck down the street to drive to the gate. When Commander Watson's warning was not heeded, he ordered the arrest of the protesters blocking the gate. Officer Stec arrested Alderman Jones.

The complaints against Alderman Jones charge him with violation of the Chicago Municipal Code, Chap. 8, Sec. 4-010 -- the August 31 complaint further specifies subsection (a) of Sec. 4-010. The complaint from August 28 states that Alderman Jones engaged in disorderly conduct in that he

> knowingly and intentionally refused to move from a gate leading to a construction site, after twice being asked to do so, in an unreasonable manner as to alarm and disturb officer Volland, and provoke a breach of the peace.

The August 31 complaint states that he

> knowingly and with intent blocked vehicles from entering and exiting the contruction [sic] site on C.T.A. property, after a lawful order of dispersal [from] a person known by him as a police officer.

Eventually, all charges against Alderman Jones were voluntarily dismissed.

ANALYSIS

Defendants assert that regardless of whether Jones's arrest is alleged to be a violation of Jones's first or fourth amendment rights, there can be no cause of action under Sec. 1983 because the arrests of Jones were supported by probable

cause.[4] Additionally, defendants claim that the doctrine of qualified immunity protects them from this suit. Alderman Jones does not dispute that his arrest would have been lawful if probable cause to arrest him had existed. Rather, he responds that because there is no evidence that he engaged in disorderly conduct on either morning, there was no probable cause. At the very least, he argues, the existence of probable cause is a question of fact. He further contends that the viability of defendants' qualified immunity defense is not appropriate for summary judgment because it necessarily turns on the existence of probable cause.

Jones is not correct that qualified immunity and probable cause collapse into one issue. While the two issues are certainly related, the question whether qua-

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[4] Defendants correctly acknowledge that Jones's Second Amended Complaint alleges that the defendants' actions violated his first amendment rights of congregation, free speech and petition and address those claims in their motion. In response, Jones has not tried to refute defendants' arguments regarding the first amendment claims. Instead, he relies solely on his claim that defendants have violated his fourth amendment right to be free from an unlawful arrest and seizure. It is presumed, therefore, that Jones has opted to pursue only his fourth amendment claims. As a result, summary judgment is appropriate with respect to the alleged violations of Jones's first amendment rights.

lified immunity is available is not contingent on whether Jones was actually guilty of disorderly conduct or whether probable cause to arrest him for that offense actually existed. Rather, the court need only consider whether officers in the defendants' position could have reasonably, even if mistakenly, believed that they had probable cause to make the arrests. Anderson v. Creighton, 483 U.S. 635, 641, 107 S. Ct. 3034, 3039 (1987). As a result, the issue of qualified immunity must be addressed separately.

Qualified immunity protects government officials from civil liability for their discretionary actions "insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818, 101 S. Ct. 2727, 2738 (1982). To apply the doctrine, the court must make two inquiries: was the right allegedly violated "clearly established" when the challenged conduct occurred, and was the defendant's conduct was objectively unreasonable in light of the particular circumstances. Biddle v. Martin, 992 F. 2d 673, 675 (7th Cir. 1993). Qualified immunity will operate to protect the official unless both questions are answered affirmatively. Here, there is no dispute that the answer to the first question is yes. Jones had a clearly established right under the fourth amendment to be free from arrest without probable cause. Summary judgment, then, turns on whether the defendants' actions leading to the arrest of Alderman Jones were objectively unreasonable in light of the facts that they

knew at the time. Putting it differently, defendants "will not be immune if, on an objective basis, it is obvious that no reasonably competent officer would have concluded that [there was probable cause for Jones's arrest]; but if officers of reasonable competence could disagree on this issue, immunity should be recognized." Malley v. Briggs, 475 U.S. 340, 341, 106 S. Ct. 1092, 1096 (1986). It makes no difference whether the conclusion is based on information later determined to be incorrect or whether the officer is otherwise mistaken as long as the conclusion is reasonable under the circumstances.

Turning to the specifics of this case, I conclude that even when taken in a light favorable to Jones, the facts known to Commander Watson and Officers Volland and Stec were sufficient to support a reasonable belief that there was probable cause to arrest Jones for disorderly conduct. Under Chicago's Municipal Code, a person can commit the offense of disorderly conduct in a number of ways. For example, a charge of disorderly conduct may be appropriate whenever a person knowingly acts unreasonably so as to provoke or aid in breaching the peace. Chicago Municipal Code, chap. 8, Sec. 4-010(a). Assembling with three or more people for the purpose of using force to disturb the public peace also can constitute disorderly conduct. Id. at Sec. 4-010(e). Further, a person engages in disorderly conduct if he

> knowingly fails to obey a lawful order of dispersal by a person known by him to be a peace officer under circum-

> stances where three or more persons are committing acts of disorderly conduct in the immediate vicinity, which acts are likely to cause...serious inconvenience, annoyance or alarm.

Id. at Sec. 4-010(d). The facts of this case indicate that there was reason to believe that Jones was in violation of any one of these subsections. On both mornings in question, more than three people were standing in front of the gate into the CTA construction site. Although they stood on a sidewalk just outside the site's perimeter fencing, their location effectively obstructed use of a temporary drive that was evident from the gravel incline over the street curb and the gate into the site. Moreover, Commander Watson had been forewarned that the demonstrators intended to cause a work stoppage. Commander Watson advised the group several times that they could be arrested if they did not move away from the gate. Nevertheless, the entire group refused to relocate. On an objective basis, an officer of reasonable competence could have concluded that the demonstrators' refusal to obey his orders was an unreasonable act done in a manner so as to provoke or aid in making a breach of the peace. Similarly, a reasonably competent officer could have interpreted the group's refusal to move, in conjunction with the previously received information that they intended to stop work at the site, as an indication that they had assembled for the purpose of using force (their presence as a physical obstruction) to disturb the peace. Finally, a reasonably

competent officer could have concluded that there were at least three persons in Jones's immediate vicinity who were engaging in disorderly conduct which was likely to cause serious inconvenience or annoyance for the construction company. As a result, a conclusion that Jones's refusal to move away from the gate violated Sec. 4-010(d) would have been reasonable under the circumstances.

Jones argues that Sec. 4-010(c) is the only subsection of the disorderly conduct ordinance that could apply to the facts surrounding his arrest.[5] He contends, therefore, that there was no reasonable basis for believing that probable cause existed because there was no evidence of an imminent threat of violence or that the police made reasonable efforts to avoid disrupting the demonstration. This argument has no merit. As discussed above, several subsections of the disorderly conduct ordinance could

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[5] Section 4-010(c) provides that a person commits disorderly conduct when he knowingly

> refuses or fails to cease and desist any peaceful conduct or activity likely to produce a breach of peace where there is an imminent threat of violence, and where the police have made all reasonable efforts to protect the otherwise peaceful conduct and activity, and have requested that said conduct and activity be stopped and explained the request if there be time.

apply to the facts at hand. Moreover, there is no indication in the record that the defendants were proceeding under Sec. 4-010(c). Indeed, a review of that subsection reveals that it more properly applies to situations where the police do not believe they can protect participants in an otherwise peaceful demonstration from an imminent threat to the demonstrators' safety. After the police have made all reasonable efforts to protect the demonstrators, the demonstrators' refusal to stop their activity in response to a police request to do so can amount to disorderly conduct. The circumstances at issue herein are quite different from those addressed by Sec. 4-010(c). Ultimately, it makes no difference which subsection best fits the circumstances surrounding Jones's arrest as long as the officers could reasonably conclude that there was probable cause to believe that Jones was engaging in some form of disorderly conduct. Biddle, 992 F. 2d at 676 ("probable cause need not have existed for the charge for which the plaintiff was arrested, so long as probable cause existed for arrest on a closely related charge"). Here, the court is not even presented with a different charge as an alternative justification for Jones's arrest, there are simply several alternative bases for concluding that probable cause existed for the charge for which he was arrested.

Alderman Jones argues, however, that there is no evidence that any person on the site was anything but peaceful and, therefore, defendants had no evidence that he provoked, made or aided in making a breach of the peace. While the demon-

strators may not have been physically or verbally abusive, it is certainly arguable whether blocking an entryway into the construction site constituted a breach of the peace. But, Jones contends, there is a question of fact as to whether they "blocked" the driveway because the gate was locked and no traffic was going in or out of the gateway. Even taking these facts into account, there is a reasonable basis for believing there was probable cause to arrest Alderman Jones. Alderman Jones has not controverted Commander Watson's deposition testimony that on August 28, workers were beginning to arrive at the worksite. Indeed, it is undisputed that some were already inside the fence. Moreover, on both mornings, at least one truck was down the block apparently waiting to use the entrance. A police officer in Commander Watson's position could have reasonably concluded that the gate would have been unlocked and the truck would have approached the entrance but for the presence of Alderman Jones and the other protesters.

Alderman Jones also argues that there was no probable cause to arrest him because Alderman Jones advised the commander that the construction company working at the site did not have the appropriate permits to use the entrance at that time or location. Alderman Jones reasons that the commander should have given this information great weight and concluded that the demonstrators had an equal right to be on the sidewalk at that time and location. At the very least, Alderman Jones contends, the police should have conducted additional investi-

gation into the status of the permits prior to arresting him. This argument goes to whether there in fact was probable cause to arrest Alderman Jones, not whether an officer could have reasonably believed there to be probable cause. As a result, it has little impact on the qualified immunity analysis. To the extent that Alderman Jones might argue that no competent officer who had received the above information could have reasonably believed probable cause to exist, such an argument would not be persuasive. Commander Watson had seen a construction permit for the site posted on the fencing. Moreover, Commander Watson understood, and it is undisputed, that the purpose of the demonstration was to protest hiring practices, not to contest the validity of the construction permits. Further, there is no evidence that any complaints regarding the alleged lack of permits had been lodged with Chicago's building commission (the city department charged with issuing and overseeing construction permits) much less that Commander Watson was aware of any such complaints. As a result, it cannot be said that Commander Watson acted unreasonably by not giving Alderman Jones's claims full credit. Further, in the face of an ongoing demonstration, it cannot be said that Commander Watson had any obligation to further investigate Alderman Jones's

claims,[6] much less that it was unreasonable not to do so.

The remaining issue is whether Officers Volland and Stec are also entitled to qualified immunity for acting on Commander Watson's orders to arrest Jones. I conclude that they are. Both officers were present at the scene immediately prior to Commander Watson's direction to take Jones into custody. There is no dispute that they saw the protesters standing in front of the gate or that they were aware that the protesters had refused to move despite Commander Watson's order to do so. Moreover, they were entitled to rely on their commander's assessment of the situation. Chathas v. Smith, 884 F. 2d 980, 987 (7th Cir. 1989) (officer need not personally witness the behavior giving rise to probable cause and instead can rely on another officer's direction). There is no evidence that either Officer Volland or Officer Stec was in possession of information that would cause them to doubt the validity of Commander Watson's order to arrest

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[6] Where there is a reasonable basis for believing probable cause to exist, there is no duty to continue investigating to determine whether an offense has actually been committed. Fink v. Gonzalez, 911 F. Supp. 332, 335 (N.D. Ill. 1996) (with respect to an arrest for criminal trespass, defendants were entitled to qualified immunity despite their failure to investigate and determine whether the plaintiff had been asked to leave the property or was privileged to ignore such a request).

Jones. As a result, it cannot be said that no reasonable officer in their position could have reasonably, albeit mistakenly, believed that there was probable cause to arrest Alderman Jones. They too are entitled to qualified immunity for their actions. Jones v. City of Chicago, 856 F. 2d 985, 994 (7th Cir. 1988) (immunity is only lost if no reasonable officer could have mistakenly believed that he had probable cause to arrest).

In light of the conclusion that each of the defendants is entitled to qualified immunity, it is unnecessary to consider whether or not probable cause actually existed for either of the two arrests at issue herein.

ORDER

For the reasons stated, defendants' motion for summary judgment on plaintiff's Second Amended Complaint is hereby granted. The court will direct the clerk to enter judgment in favor of defendants on the entire complaint.

ENTER:

Joan H. Lefkow

JOAN HUMPHREY LEFKOW
United States Magistrate Judge

Dated: March 21, 1996

App. 16

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NO. 96-1938

VIRGIL JONES,

Plaintiff-Appellant,

v.

RONALD WATSON, J. VOLLAND,
and W. STEC,

Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, No. 93 C 7799 --
Joan Humphrey Lefkow, Magistrate Judge.

ARGUED NOVEMBER 6, 1996 -
DECIDED FEBRUARY 10, 1997

Before CUMMINGS, RIPPLE, and KANNE, Circuit Judges.

CUMMINGS, Circuit Judge. On August 28, 1992, and again on August 31, 1992, Chicago Alderman Virgil Jones was arrested and charged with disorderly conduct while protesting at a Chicago Transit Authority ("CTA") construction site. Jones filed a lawsuit under 42 U.S.C. Sec. 1983, alleging, among other things, that the Chicago Police officers involved in his arrest

(defendants Chicago Police Commander Ronald Watson and Police Officers James Volland and William Stec) violated his Fourth Amendment right to be free from unlawful seizure.[7] Finding that Jones'

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[7] Jones' Second Amended Complaint also alleged that his arrest infringed the "peaceful exercise of his rights of congregation, free speech and petition as set forth in the First and Fourteenth Amendments to the Constitution of the United States and in sections four and five of Article I of the Constitution of the State of Illinois." He further alleged that, in addition to violating the Fourth Amendment, his arrest violated section two of Article I of the Illinois Constitution and "his right as an Alderman to inspect construction sites pursuant to the ordinances of the City of Chicago." Second Am. Compl. Count I, Par. 4; id. Count II, Par. 3. In their motion for summary judgment below, defendants specifically argued that they were entitled to judgment on Jones' First Amendment claim. Because Jones did not respond to this argument, the magistrate judge concluded that Jones had abandoned that claim, and found that defendants were therefore entitled to summary judgment as to it. Jones does not contest that determination. The defendants also argued (correctly) in their motion for summary judgment that violations of state law or local ordinance cannot support a claim under Sec. 1983. Jones did not respond to that argument either. Although the magistrate judge's opinion is silent as to this issue, it is apparent that Jones also abandoned whatever Sec. 1983

arrest was supported by probable cause and that all defendants were entitled to qualified immunity, the magistrate judge granted their motion for summary judgment. For the reasons that follow, we affirm.

I. BACKGROUND

On August 28, 1992, and on August 31, 1992, Alderman Jones and a number of other public officials and private citizens went to a CTA construction site at 74th and Wood to protest what they believed to be non-compliance with minority hiring requirements at the worksite. On both occasions, Alderman Jones and some of the other demonstrators crossed from the north side of 74th Street over to the south side -- near the fence surrounding the site's perimeter. Many other protesters demonstrated on the north side of the street. Estimates of the number of protesters present at the site range from ten to fifty.[8] Chicago Police officers, including

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claims he thought he had as a result of state law and local ordinance violations. We note that the magistrate judge's opinion does "direct the clerk to enter judgment in favor of the defendants on the entire complaint," and on appeal Jones does not press any issues relating to state or local law violations. Accordingly, the only issues now before the Court relate to Jones' Fourth Amendment claims.

[8] During his deposition, Alderman Jones stated that, although he "didn't count heads," he knew that the number of demonstrators "wasn't less than thirty." Officer Volland estimated that there were

Commander Watson, were at the scene on both occasions. Watson testified that he had been informed that there was going to be a demonstration on the 28th and that Alderman Jones was going to stop work at the site.

The protesters who had crossed over to the south side of the street demonstrated in front of a gate that allowed access into and out of the site. The City of Chicago had previously issued a temporary driveway permit to the Walsh Construction Company to allow ingress and egress over the sidewalk at the worksite on 74th Street. The construction company laid gravel over the curb to create an inclined driveway for vehicles to pass over the curb, traverse the sidewalk and enter (or exit) the gate.[9] During his deposition Watson was asked "whether the CTA or any construction contractor out at that

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approximately ten to fifty demonstrators present on August 28, and Commander Watson testified that there were "10, 12, 15, 20, I don't know" demonstrators on the north side of the street. Officer Stec testified that on August 31 there were "approximately 30" protesters on the north side of the street in addition to the seven who were arrested while demonstrating on the south side of the street.

[9] In his opening brief on appeal, Jones faults the magistrate judge for crediting this statement as an uncontested fact. However, the record reveals that it was Jones himself who offered the statement in his Local Rule 12(N) statement of uncontested facts.

site obtained a permit to have a driveway across that public sidewalk," to which he replied, "I can only tell you that they had a permit for their construction that was posted at the site."[10] When Alderman Jones crossed over to the south side of the street on August 28, he attempted to read the construction permit that was posted on the perimeter fence but a worker inside the job site removed the permit so that it could not be viewed.[11] Jones complained to Watson that the permit was not posted and requested to see it. Jones also told Commander Watson that as an alderman he had a right to make an inspection of any construction in his ward.[12] Watson told Jones that if he and the other protesters blocked the gate and refused to move they would be arrested. Watson gave Jones and the other protesters several warnings to move back to the north side of the street. Shortly thereafter, those

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[10] Watson could not recall whose name was on the permit or what the permit specifically authorized, commenting only "It was a permit issued by the City of Chicago for that construction site."

[11] It is apparent from Jones' testimony that the permit was reposted on the fence at the time of the August 31 demonstration and arrest.

[12] It appears from the record that the construction site was actually not in Alderman Jones' ward. Jones is an alderman for the Fifteenth Ward. The CTA property at 74th and Wood is located in the Seventeenth Ward.

protesters in front of the gate, including Jones, were arrested and charged with disorderly conduct under the Chicago Municipal Code.

More of the same followed on August 31. Alderman Jones and other protesters stood in front of the gate, this time with their arms interlocked. Watson again informed Jones that if he blocked the gate and refused to move he would be arrested. Jones and the other protesters did not move. When Watson ordered that Jones be arrested, Jones was still standing in front of the gate with his arms interlocked with the other protesters.

Officer Volland, who arrested Jones on August 28, and Officer Stec, who arrested Jones on August 31, effected the arrests at Watson's direction.

Jones' civil rights suit alleges that he was arrested without probable cause. The parties consented to the exercise of jurisdiction by a United States Magistrate Judge. In moving for summary judgment, defendants argued that probable cause did in fact exist and in any event qualified immunity shielded them from liability. The magistrate judge agreed with defendants on both scores and entered judgment in their favor.

II. ANALYSIS

Standard of Review

We review a district court's grant of summary judgment and its determination that the defendants are entitled to qualified immunity de novo. Forman v. Richmond Police Department, No. 96-2091, slip op. at 8, 1997 WL 15243*4 (7th Cir. Jan. 15, 1997); Booker v. Ward, 94 F. 3d 1052, 1057

(7th Cir. 1996), petition for certiorari filed Nov. 27, 1996, 65 USLW 3433; Edwards v. Cabrera, 58 F. 3d 290, 293 (7th Cir. 1995); Burns v. Reed, 44 F. 3d 524, 529 (7th Cir. 1995), certiorari denied, 115 S. Ct. 2583; Maltby v. Winston, 36 F. 3d 548, 555 & n. 7 (7th Cir. 1994), certiorari denied, 115 S. Ct. 2576.[13]

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[13] As a panel of this Court recently noted, "[t]here has been some tension identified in our cases with respect to the proper standard of review in qualified immunity cases in which probable cause is at issue. See Maltby v. Winston, 36 F. 3d 548, 555-556 n. 7 (7th Cir. 1994) (criticizing Mahoney v. Kesery, 976 F. 2d 1054 (7th Cir. 1992)." Edwards v. Cabrera, 58 F. 3d 290, 293 (7th Cir. 1995). As is evident from this excerpt, the tension traces back to the Mahoney decision, in which a panel of this Court held that the "clear error" standard of review should be applied in these cases. The Mahoney panel's holding appears to have been based on the joint premises that (1) the qualified immunity determination and the probable cause determination effectively merge with one another because the "determination that there was or was not probable cause will automatically resolve both immunity and the merits," 976 F. 2d at 1059; see also Boyce v. Fernandes, 77 F. 3d 946, 948 (7th Cir. 1996) ("Where the only issue bearing on immunity is whether the defendant had probable cause to make the search or arrest that is challenged, merits and immunity merge; the dispositive question is simply whether the defendant did have probable cause."), certiorari denied, 506

Qualified Immunity

The doctrine of qualified immunity shields public officials performing discretionary functions from liability for civil damages where their conduct "does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). The doctrine serves the purpose of protecting public officials "'from undue interference with their duties and from potentially disabling threats of liability.'" Elder v. Holloway, 510 U.S. 510, 514 (quoting Harlow at 806).

In the specific context of a damages action brought under 42 U.S.C. Sec. 1983 stemming from a warrantless arrest, the arresting officers will be immune from liability "if 'a reasonable officer could have believed [the plaintiff's arrest] to be lawful, in light of clearly established law and the information the arresting officers possessed.'" Hunter v. Bryant, 502 U.S. 224, 227 (quoting Anderson v. Creigh-

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U.S. 989, and (2) "the standard of review of a factual determination of probable cause is...clear error," id. (citing United States v. Spears, 965 F. 2d 262, 269 (7th Cir. 1992)). Of course the Supreme Court recently held that the proper standard for reviewing a probable cause determination is de novo review. Ornelas v. United States, 116 S. Ct. 1657. Thus, by Mahoney's own reasoning, it must now be concluded that the proper standard in qualified immunity cases where probable cause is at issue is de novo review.

ton, 483 U.S. 635, 641). A warrantless arrest is lawful under the Fourth Amendment if supported by probable cause. Beck v. Ohio, 379 U.S. 89, 90. Thus, the officers are entitled to immunity if a reasonable officer could have believed that probable cause existed to support the arrest. Hunter, 502 U.S. at 228. Significantly, "[e]ven law enforcement officials who 'reasonably but mistakenly conclude that probable cause is present' are entitled to immunity." Hunter at 227; see also Edwards v. Cabrera, 58 F. 3d 290, 293 (7th Cir. 1995) ("Even if probable cause was lacking...[the arresting officers] are entitled to immunity as long as their belief was reasonable."); Maltby v. Winston, 36 F. 3d 548, 555 (7th Cir. 1994), certiorari denied, 115 S. Ct. 2576. So long as "officers of reasonable competence could disagree on this issue, immunity should be recognized." Malley v. Briggs, 475 U.S. 335, 341. As a panel of this Court put it in Jones v. City of Chicago, 856 F. 2d 985, 994 (7th Cir. 1988): "only if no reasonable officer could have mistakenly believed that he had probable cause to arrest is the immunity forfeited." See also Eversole v. Steele, 59 F. 3d 710, 717-718 (7th Cir. 1995) ("if a case involves a question of whether probable cause existed to support an officer's actions, the case should not be permitted to go to trial if there is any reasonable basis to conclude that probable cause existed." (internal quotation marks and citations omitted). Guided by these principles and standards, we now consider the merits of Jones' appeal.

Jones' Disorderly Conduct Arrest

The undisputed facts of this case reveal that Commander Watson had been informed that a demonstration was to take place at the CTA construction site and that Alderman Jones intended to "stop work" at the site. Watson was aware of a permit issued by the City of Chicago for the construction site. It is also undisputed that in connection with the construction project a temporary driveway had been set up so as to allow vehicles to drive over the street curb, across the sidewalk and through a gate allowing ingress and egress to and from the site. The City of Chicago had issued a permit expressly authorizing such a temporary driveway. The demonstrators positioned themselves in front of the gate by the driveway. Although there is no evidence in the record that any work had actually commenced, Commander Watson testified workers were arriving at the site at the time of the demonstration (indeed, Jones' claim that a worker removed the permit from the perimeter fence confirms that workers were indeed present at the site) and a truck was located down the street apparently awaiting entry to the site.[14] Watson

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[14] There is some dispute as to whether the truck was attempting to enter the site at the time of the arrest or whether it was simply parked down the street awaiting later entry. Given the posture of this case, we credit Jones' contention that the truck was simply parked down the street; however, this dispute is immaterial to the outcome of the case.

directed Jones to the other side of the street and warned him that if he did not go to the other side he would be arrested. Shortly thereafter he was. A repeat performance ensued on August 31 when Jones and other protesters returned, expressed the same concerns, stood with arms interlocked in front of the gate, and refused to move when directed to do so by Watson, resulting in their arrest.

On these facts, there was plainly probable cause to arrest Jones for disorderly conduct. Probable cause exists "if 'at the moment the arrest was made...the facts and circumstances within [the officers'] knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing'" that the arrestee was committing an offense. Hunter, 502 U.S. at 228 (quoting Beck, 379 U.S. at 91); see also Booker v. Ward, 94 F. 3d 1052, 1058 (7th Cir. 1996), petition for certiorari filled Nov. 27, 1996, 65 USLW 3433. It is well-established in Illinois that the act of blocking the free flow of pedestrian or vehicular traffic on public ways will support a conviction for the offense of disorderly conduct. See City of Chicago v. Fort, 46 Ill. 2d 12, 262 N.E. 2d 473 (Ill. 1970) (affirming disorderly conduct convictions of individuals who, among other things, were "blocking public passage on a sidewalk" and "standing in such a way as to block the entrances to a tavern, a laundromat, and a poolroom,"and who refused to disperse when directed to do so); People v. Raby, 40 Ill.2d 392, 240 N.E.2d 595 (Ill.1968) (affirming disorderly conduct conviction of demonstrator who blocked vehicular traffic by sitting (or lying) down

in an intersection), certiorari denied, 393 U.S. 1083; City of Chicago v. Joyce, 38 Ill.2d 368, 232 N.E.2d 289 (Ill.1967) (affirming disorderly conduct conviction of demonstrator who sat on the sidewalk, blocking entrance to City Hall and obstructing sidewalk traffic, and who ignored order to disperse). In each of these three cases, the Illinois Supreme Court relied on the United States Supreme Court's opinion in Cox v. Louisiana, 379 U.S. 536, 554-555, wherein the Court remarked:

> The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time. The constitutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of anarchy. The control of travel on the streets is a clear example of governmental responsibility to insure this necessary order.*** Governmental authorities have the duty and responsibility to keep their streets open and available for movement. A group of demonstrators could not insist upon the right to cordon off a street, or entrance to a public or private building, and allow no one to pass who did not agree to listen to their exhortations.

See also Bachellar v. Maryland, 397 U.S. 564, 571 (reversing convictions of anti-war protesters where the record left open the possibility that their arrests were content-based, but noting "petitioners' convictions could constitutionally have rested on a finding that they sat or lay across a public sidewalk with the intent of fully blocking passage along it, or that they refused to obey police commands to stop obstructing the sidewalk in this manner and move on").

The Chicago Municipal Code defines the offense of disorderly conduct as encompassing, among other things, the following:

> knowingly:
> (a) Do[ing] any act in such unreasonable manner as to provoke, make or aid in making a breach of peace; or...
> (d) Fail[ing] to obey a lawful order of dispersal by a person known...to be a police officer under circumstances where three or more persons are committing acts of disorderly conduct in the immediate vicinity, which acts are likely to cause substantial harm or serious inconvenience, annoyance or alarm; or
> (e) Assembl[ing] with three or more persons for the purpose of using force or violence to disturb the public peace[.]

Chicago Municipal Code Sec. 8-4-010.

There is no dispute that Jones and his fellow demonstrators planted them-

selves squarely in front of the construction site gate (directly in the path of the temporary driveway that had been erected) in such a manner as would obstruct any attempt by the nearby construction truck to enter the site. In light of cases such as Fort, Raby, and Joyce, such obstruction of vehicular traffic over an authorized driveway could reasonably be regarded as disorderly conduct. It is also undisputed that Jones knew Watson to be a police officer and that Watson had given an order of dispersal that was refused by Jones. Furthermore, a reasonably prudent person could have readily concluded that the blockade of the construction site gate -- as part of a demonstration aimed at stopping work at the site -- was likely to cause serious inconvenience or annoyance. These facts plainly establish that Watson[15] had probable cause to ar-

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[15] Of course, Watson's probable cause determination may be imputed to the officers who actually effected Jones' arrest. See United States v. Randall, 947 F. 2d 1314, 1319 (7th Cir. 1991) (observing that "'[t]he police who actually make the arrest need not personally know all the facts that constitute probable cause...the arrest is proper so long as the knowledge of the officer directing the arrest...is sufficient to constitute probable cause.'") (quoting United States v. Valencia, 913 F. 2d 378, 382-383 (7th Cir. 1990)); see also Maltby v. Winston, 36 F. 3d 548, 564 n. 26 (7th Cir. 1994) ("The collective knowledge doctrine is designed to allow law enforcement personnel from the same agency, or from differ-

rest Jones for violation of Sec. 8-4-010(d) of the municipal code.[16]

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ent jurisdictions, to rely on the probable cause determinations of one another in order to apprehend specific suspects."), certiorari denied, 115 S. Ct. 2576.

[16] Although we have analyzed the probable cause question with reference to subsection (d), we note that the criminal complaint issued against Jones following his August 28 arrest did not specify any subsection of the City's disorderly conduct ordinance and simply described his offense in the following terms: "knowingly and intentionally refused to move, from gate leading to a construction site, after twice being asked to do so, in an unreasonable manner as to alarm and disturb officer Volland, and provoke a breach of the peace." Although it is somewhat illegible, the August 31 complaint appears to specify subsection (a) of Sec. 8-4-010 and describes the offense as: "knowingly and with intent blocked vehicles from entering and exiting the construction site on C.T.A. property after a lawful order of dispersal by a person known by him as a police officer." All of this is largely irrelevant for present purposes. As this Court has noted in the past and the magistrate judge correctly observed in her opinion below, "in Sec. 1983 actions for false arrest, probable cause need not have existed for the charge for which the plaintiff was arrested, so long as probable cause existed for arrest on a closely related charge." Biddle v. Martin, 992 F. 2d 673, 676 (7th Cir. 1993). Whatever

We find it immaterial that the truck at issue may still have been located down the street at the moment that Jones and the other protesters were arrested. The record reflects that workers had arrived at the site and there can be little serious debate about the truck's ultimate destination. That Jones and the others refused to move away from the gate and driveway when instructed to do so -- going so far as to lock arms together on the second occasion -- plainly manifested their intent (consonant with Watson's understanding that Jones' objective was to "stop work" at the site) to preclude persons or materials from passing through the gate. Indeed, if the demonstrators' purpose was anything other than blocking movement through the gate it is difficult to imagine why they would insist on positioning themselves in front of the gate. Under these circumstances, Watson could reasonably have concluded that Jones' conduct constituted disorderly conduct even without forcing the issue by signalling the truck driver to approach the gate for purposes of testing the demonstrators' resolve. Cf. Bachellar, 397 U.S. at 571 (noting "petitioners' convictions could constitutionally have rested on a finding that they sat or lay across a public sidewalk with the intent of fully blocking passage along it").

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specific disorderly conduct offense may have been cited on the criminal complaint, probable cause plainly existed here for the closely related charge of violating subsection (d).

The other arguments raised by Jones in an effort to vitiate the probable cause determination are equally unavailing and merit little discussion. In brief, Jones argues that the construction activity taking place at the CTA site was unlawful because the building permit was invalid and because a Chicago noise control ordinance prohibits certain construction activities before eight o'clock in the morning. There is no reason to address the merits of these contentions, for even if Jones were correct in his assertions it would not alter our probable cause determination. The City's disorderly conduct ordinance contains no vigilante exception and there is simply no basis for Jones' position that he was somehow entitled to disregard Watson's dispersal orders and block the gate simply because he was of the opinion that unauthorized activity was taking place at the site. To the extent that Jones believes that Watson was required to investigate his contention that the contractor lacked a valid permit before Watson could arrest him, he is mistaken. This Court has consistently held that "once police officers have discovered sufficient facts to establish probable cause, they have no constitutional obligation to conduct any further investigation in the hopes of uncovering potentially exculpatory evidence." Forman v. Richmond Police Dept., No. 96-2091, slip op. at 20, 1997 WL 15243 at *12 (7th Cir. Jan. 15, 1997) (collecting cases); see also Kompare v. Stein, 801 F.2d 883, 890 (7th Cir. 1986) ("the police...have no constitutional duty to keep investigating a crime once they have established probable cause") (internal quotation marks and citations omit-

ted). As explained above, the facts and circumstances known to Watson at the time of Jones' arrest amply supported a probable cause determination. Accordingly, further investigation was unwarranted. We further note that there is no evidence in the record that Watson entertained any doubt as to the lawfulness of the construction activity at the site, nor can we conclude that Jones' mere assertions that the construction was unlawful were sufficient to create such doubt as would require further investigation.

Having determined that Jones' arrest was supported by probable cause, we conclude that his claim under 42 U.S.C. Sec. 1983 is defeated. Schertz v. Waupaca County, 875 F.2d 578, 582 (7th Cir.1989) (noting that "the existence of probable cause for arrest is an absolute bar to a sec. 1983 claim for unlawful arrest"). Thus our inquiry is complete and we need not reach the issue of whether defendants are shielded from liability under the doctrine of qualified immunity.

AFFIRMED.

A true Copy
Teste:

_____
Clerk of the United States
Court of Appeals for the
Seventh Circuit